

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 799 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT

Versus

NIKULBHAI SAHNABHAI VAGHRI

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Appearance:

PUBLIC PROSECUTOR for Appellant.

MR MR VYAS for Respondent (Absent).

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CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 25/07/96

ORAL JUDGEMENT

The State has filed this acquittal appeal under section 378 of the Code of Criminal Procedure against the judgment passed by the learned Metropolitan Magistrate, Court No.9, Ahmedabad, in Criminal Case No.1020/86 on June 30, 1988. By the impugned judgment, the learned Metropolitan Magistrate ordered to acquit the

respondent-accused of the offences punishable under sections 323,324 and 504 of the Indian Penal Code.

Briefly stated the facts of the case are that at about 7.00 p.m. on June 28,1986, the incident took place on account of a dispute between P.W.2, Vikrambhai Shanabhai and the respondent-accused on the excuse of fixing nails on the wall and for vacating the house at Vaghriwad. It is alleged that the accused abused the complainant, P.W.2, and voluntarily caused injury by giving knife blow on the chest of P.W.2 and thereby committed offences punishable under secs.323,324 and 504 of the Indian Penal Code.

Charge Exh.3, on the aforesaid allegation, was framed against the accused person to which he pleaded not guilty.

The learned Metropolitan Magistrate, after recording the evidence of the prosecution witnesses and on appreciation thereof and on basis of the other material on record, came to the conclusion that the prosecution failed to examine the independent and impartial witnesses in support of the injury by dangerous weapon alleged to be caused by the accused No.2 to the complainant, P.W.2 and that the medical evidence is doubtful. The learned Metropolitan Magistrate, therefore, acquitted the accused.

Mr.M.A. Bukhari, learned Additional Public Prosecutor, has mainly relied upon evidence of P.W.2,Vikrambhai Shanabhai at Exh.6, who is the complainant. He has deposed that there was a common wall between the houses of the complainant and the accused. The accused was placing nails in the common wall and the quarrel ensued and in the process the accused being excited gave knife blows on the right side of the chest of complainant, Vikrambhai Shanabhai. He has produced the complaint at Exh.7. Mr.Bukhari also relied upon the evidence of P.W.3,Dr.(Mrs.) Dharmishta Gunvant Shah at Exh.8, who produced the medical certificate at Exh.9. She has no personal knowledge, as she did not examine the injured on June 28,1986.Dr.Rajeshbhai Chandulal Shah Exh.10, who was attached to Shardaben Hospital, Saraspur in Ahmedabad, had examined the injured-complainant-P.W.2. He deposed that there was multiple abrasion in the right side chest of P.W.2. The allegation is that the asccused caused injury by knife. In fact, if the knife was used,

there could not have been abrasion and as such the injury as is deposed to by the Doctor cannot be by instrument of shooting or stabbing. The learned Magistrate has, therefore, rightly acquitted the accused, having regard to the medical evidence on record.

The learned Magistrate has also recorded that the dispute has taken place on account of the previous enmity between the accused and P.W.2, Vikrambhai. Admittedly, no independent or impartial witnesses, though available in the near vicinity, have been examined by the prosecution. In the overall facts and circumstances of the case, the prosecution has failed to establish the offences punishable under sections 323, 324 and 504 of the Indian Penal Code against the accused.

It is settled law that the High Court while dealing and disposing of the acquittal appeal would be slow in disturbing the finding of fact arrived at by the trial Court who had the advantage of seeing the witnesses. Where two reasonable conclusions can be drawn on the evidence on record, this Court should refrain from interfering with the order of acquittal recorded by the Court below. In view of this position of law, the appeal deserves to be dismissed.

In the result, the appeal, having no merit, is dismissed.

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